STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

STEVEN E. CHESTER
DIRECTOR

May 20, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Daniel P. Fons
7250 Jackson Park Drive
Bloomfield Hills, Michigan 48301

Dear Mr. Fons:

SUBJECT: Demand Letter for the Performance of Response Activities and Reimbursement of State Costs at the Sanicem Landfill Facility, Orion Charter Township and the City of Auburn Hills, Oakland County, Michigan; Site ID No. 63000060

This Demand Letter serves as the Department of Environmental Quality's (DEQ's) notice to you of your legal responsibility relating to the release or threatened release of hazardous substances on or emanating from the Sanicem Landfill property (Property), located at 4901 South Lapeer Road and associated areas in Orion Charter Township and the city of Auburn Hills, Oakland County, Michigan. The DEQ previously notified you by Demand Letters dated February 2, 1999, and October 31, 2000 (Attachments A and B), that areas of the Property contained hazardous substances in concentrations that exceed the requirements of Section 20120a(1)(a) or (17) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), or exceed the cleanup criteria for unrestricted residential use under Part 213, Leaking Underground Storage Tanks, of the NREPA. Any area of the Property where a hazardous substance in concentrations that exceed these requirements or criteria has been released, deposited, or disposed of, or otherwise comes to be located, and any other area, place, or property where a hazardous substance in concentrations that exceed these requirements or criteria comes to be located as a result of the migration of the hazardous substance from the Property (collectively, the Facility) constitutes a "facility" that is regulated under Part 201. State of Michigan (state) law authorizes the DEQ to use state funds to undertake response activities at a facility that are necessary to protect public health, safety, or welfare, or the environment.

In addition to the Demand Letters that were previously sent to you, the DEQ also sent a formal notice letter to the J. Fons Company, addressed to you as president of the company, on April 21, 1995. In the Demand Letters that the DEQ previously sent to you and to the J. Fons Company, you were notified of your liability for the Facility and were

requested to perform response activities at the Facility in accordance with state and federal laws. The DEQ also notified you of the state's intent to spend funds at the Facility if you did not perform these response activities.

As you are aware, in order to facilitate the redevelopment of the Facility, in March 2002, the DEQ agreed to first request the Brown Road Group LLC (BRG), the current property owner, to conduct any additional response activities that are created, uncovered, or otherwise come to exist during the course of redevelopment activities. The DEQ also reserved the right, in the event that the BRG could not or would not comply with such requests, to take any other necessary action to conduct or to require other parties to conduct the response activities. To date, after numerous requests by the DEQ, the BRG has not conducted the solicited response activities at the Facility, prompting the DEQ to undertake certain response activities with public funds and again directly seek your compliance with Part 201 and the Part 201 Administrative Rules (Part 201 Rules).

This Demand Letter requires you, Mr. Daniel P. Fons, to commit to undertake the necessary and appropriate response activities at the Facility; to reimburse state costs which have been incurred since June 12, 2002, and future response activity costs incurred by the state for responding to the release or threatened release of hazardous substances at the Facility; and to resolve the payment of civil fines for your failure to comply with state and federal laws. If you fail to resolve the above matters with the state voluntarily, the state will pursue any legal remedies available under state and federal laws.

SUMMARY OF SITE HISTORY AND RESPONSE ACTIVITIES

The Facility was operated as a landfill from 1964 to 1978, with the J. Fons Company operating the landfill from 1969 through 1978. According to records kept by the J. Fons Company, approximately 7,000 to 8,000 cubic yards of waste were disposed of daily during their operation of the Facility. During the Facility's operation, inspections conducted by the DEQ identified numerous deficiencies, including, but not limited to, waste being dumped into the water table, leachate outbreaks, inadequate placement of daily cover, failure to install perimeter drains for surface water management, and failure to determine the need for gas management at the Facility. Based upon these, as well as other conditions, the landfill was closed on June 7, 1978.

On September 25, 1978, a consent order was entered between the DEQ and the J. Fons Company. The consent order required that the J. Fons Company correct the deficiencies at the landfill and that the landfill remain closed until the issuance of the necessary permits and licenses. The J. Fons Company initiated corrective actions from August through October 1981 with the intent of reopening the landfill; however, the J. Fons Company never satisfactorily corrected the deficiencies at the landfill. Consequently, a license to operate was not obtained, and the landfill remained closed.

In 1995 and 1996, the DEQ conducted remedial investigations and interim response activities at the Facility. The activities conducted include, but are not limited to, drum removal, geophysical survey, installation of soil borings and monitor wells, soil and

groundwater sample collection and analyses, monitor well repair and replacement, and methane vent replacement.

The BRG purchased the Property from you sometime during the spring of 2003. During redevelopment activities on the Property, it became known that methane, generated by decomposition of the waste in the landfill, was present at potentially explosive levels at and beyond the Property boundary. Soil investigations in the fall of 2003 to the present have indicated the presence of high levels of methane in and around buildings located north of the Property. Further, investigations conducted by the DEQ to date have demonstrated that methane continues to migrate from the Property in multiple directions, but the full extent of methane migration has not been defined.

The presence of methane near buildings at potentially explosive levels may represent an imminent and substantial endangerment to public health and safety. In response, the United States Environmental Protection Agency (USEPA) issued letters on April 23, 2004, to the BRG, the current owner of the Property, and Jacob Properties, the owner of property along the north boundary of the Sanicem landfill where waste was also discovered, informing them of their potential liability for cleanup of the Sanicem landfill under the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended (CERCLA), 42 USC Section 9601 *et seq.*; and/or the Resource Conservation and Recovery Act, 1976 PL 94-580, as amended, 42 USC Section 6901 *et seq.* The USEPA's letters indicate that an Extent of Methane Contamination Study, and the implementation of a Methane Extraction System or other control technology are necessary to mitigate or eliminate this threat to public health and safety.

IDENTIFICATION OF PERSON WHO IS LIABLE

Persons[1] who are liable for a facility pursuant to Section 20126 of the NREPA include the owners and operators of the facility who were responsible for an activity causing a release or threatened release of a hazardous substance and who owned or operated the facility on or after June 5, 1995.

As outlined in Attachments A and B, the DEQ considers you an owner and operator of the Facility who is responsible for an activity causing a release or threat of release of hazardous substances, and therefore, you are a person liable under Section 20126 of the NREPA.

REQUEST FOR RESPONSE ACTIVITIES

This Demand Letter serves as the DEQ's written request that you perform the response activities required under Section 20114(1)(a)-(g) and the Part 201 Rules; prepare and submit work plans for the performance of response activities required under Section 20114(1)(h); and upon receipt of the DEQ's approval, implement those plans. If you do not agree to undertake the necessary and appropriate response activities at the

[1] Section 301(g) of Part 3, Definitions, of the NREPA defines a "person" as an individual, partnership, corporation, association, governmental entity, or other legal entity.

Facility or do not diligently pursue the performance of these response activities, the state may perform these response activities and you will be legally liable to the state for the reimbursement of any costs, including any accrued interest, which the state incurs to perform these response activities.

Pursuant to Section 20114(1)(a)-(g) and the Part 201 Rules, you are required to do the following:

- Determine the nature and extent of the release at the Facility.
- Immediately stop or prevent the release at the source.
- Immediately implement source control or removal measures to remove or contain hazardous substances that were released after June 5, 1995.
- Immediately assure that all persons whose water supplies are contaminated or immediately threatened by contamination have alternate water service.
- Immediately identify and eliminate any threat of fire or explosion or any direct contact hazards, and notify local fire officials upon identification.
- Immediately initiate removal of a hazardous substance that is in a liquid phase, that is not dissolved in water, and that has been released; and remove reasonably recoverable free-phase liquid on an ongoing basis.
- Immediately mitigate or eliminate acutely toxic releases, either direct or though venting groundwater, to surface water.
- Immediately mitigate or eliminate surficial contamination that is acutely toxic to humans or wildlife.
- Diligently pursue response activities necessary to achieve the cleanup criteria specified in Part 201 and the rules promulgated thereunder.[2]

Compliance with your affirmative obligation to diligently pursue response activities at the Facility includes conducting response activities in a manner and according to a schedule which is responsive to known and reasonably anticipated threats to the public health, safety, or welfare, or to the environment.

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[2] Any evaluation of whether response activity was diligently pursued, in the context of determining compliance with Section 20114 of the NREPA, shall include all of the following considerations: (a) whether an emergency situation existed, to which the liable person responded appropriately and in good faith, based on his or her knowledge at the time; (b) whether effective interim response activities were employed; (c) whether injury or unacceptable exposures were prevented, minimized, or mitigated (this consideration shall include evaluation of the presence of wellhead protection zones that may be affected by the Facility); (d) whether a determination of the nature and extent of contamination occurred at an appropriate pace based on a person's knowledge at the time; (e) whether off-property migration of hazardous substances, if any, was addressed in a timely manner after the person obtained knowledge of the condition; and (f) whether a response activity was identified and implemented within a reasonable time frame, given the relevant pathways of exposure and the hazardous substances of concern.

Therefore, you must take the following actions:

1. Provide a plan for and undertake interim response activities. This plan must provide for the performance of any response activities that are needed to comply with Section 20114(1)(c)-(f) and the Part 201 Rules, specifically:

   a. Prevent or eliminate the migration of methane.

   b. Mitigate unacceptable risk from the venting of gasses to the ambient air.

   c. Prevent or eliminate any explosive hazard in buildings, above or below ground structures, or other confined spaces where methane may accumulate or has accumulated. Actions to be done immediately include venting any areas identified where methane levels in soil gas are at or above 1.25 percent by volume at or near any building or structure, and continued monitoring to verify methane abatement. Install and maintain methane alarm monitors in those buildings where methane has been identified at 1.25 percent of soil gas or greater in the nearby soil. For all additional areas and for those identified in the future where methane is identified in the soil gas at concentrations at or above 1.25 percent, install and maintain methane alarm monitors for all potentially affected buildings.

   d. Eliminate any discharges to the surface water or groundwater above acute and chronic groundwater surface water interface (GSI) criteria at DEQ-approved GSI compliance points as provided in the Part 201 Rules, and provide adequate, continuous treatment for any contaminated groundwater extracted to comply with Part 201 and other state and federal laws.

   e. Immediately cease the discharge of leachate or other inappropriate run-off from the Property to waters of the state.

   f. Mitigate unacceptable risk from all direct contact hazards associated with contaminated soils or waste.

   The plan, including an implementation schedule, shall be submitted to the DEQ for review and approval within 30 days from receipt of this Demand Letter and implemented in accordance with the approved schedule. The DEQ will consider an extension of this deadline, provided good-faith efforts are undertaken to address the fire and explosion hazard in a timely manner. A report describing these efforts, other work underway, and the status of work plans will be required by the 30-day deadline. The DEQ strongly encourages you to contact Mr. Jeffrey Kimble, USEPA On-Scene Coordinator, at 734-692-7688 to coordinate any response activities you undertake with those of the USEPA or the persons noticed of their liability by the USEPA.

2. Provide a plan for and undertake evaluation activities. This plan must include a remedial investigation to determine the nature and extent of the release at the

Facility as required by Section 20114(1)(a) of the NREPA and the Part 201 Rules. This plan should include a proposal to install sufficient soil borings and permanent monitor wells to fully define the extent of migration of all contaminants from the Facility, including, but not limited to, methane, leachate, and contaminated groundwater. The plans, including an implementation schedule, shall be submitted to the DEQ within 45 days of receipt of this Demand Letter for review and approval, and implemented in accordance with the approved schedule.

3. Take any other response activity determined by the DEQ to be technically sound and necessary to protect the public health, safety, or welfare, or the environment. In addition to the above requirements, should additional information indicate the need for other response actions, the DEQ reserves the right to request additional response actions at a later time.

4. Submit to the DEQ for approval a remedial action plan (RAP) that, when implemented, will achieve the cleanup criteria specified in Part 201 and the Part 201 Rules. The RAP shall address all releases of hazardous substances in all environmental media at the Facility consistent with Sections 20118, 20120a, 20120b, and 20120d of the NREPA and the Part 201 Rules.

5. Implement an approved RAP in accordance with a schedule approved by the DEQ pursuant to Part 201 and the Part 201 Rules. When implemented, the RAP shall:

   a. Be protective of human health, safety, welfare, and the environment;

   b. Achieve the cleanup criteria specified in Part 201; and

   c. Ensure the effectiveness and integrity of the RAP.

The plans, and any subsequent documents, required pursuant to the Section 20114(1)(h) request above shall be submitted to the following:

Mr. Benjamin Mathews, Project Manager
Southeast Michigan District Office
Remediation and Redevelopment Division
Department of Environmental Quality
38980 West Seven Mile Road
Livonia, Michigan 48152-1006
Telephone: 734-953-1447
Fax: 734-953-1544

Within 14 days of the date of your receipt of this Demand Letter, please provide to Mr. Benjamin Mathews, Project Manager, at the address indicated above, a letter that expresses whether you commit to pursue diligently the response activities required under Sections 20107a and 20114(1)(a)-(g) at the Facility and to submit the plans

required under Section 20114(1)(h) within the time frame specified in this Demand Letter. Please include with that letter a description of the response activities you have taken or will take at the Facility to comply with Sections 20107a and 20114(1)(a)-(h) of the NREPA, and the Part 201 Rules.

DEMAND FOR PAYMENT OF COSTS AND CIVIL FINES

Please be advised that the state has incurred, and may continue to incur, costs for performing response activities at the Facility. Interest on these response activity costs shall begin to accrue on the date you receive this Demand Letter. To avoid liability for any interest that will accrue on these costs, you may arrange to reimburse these costs to the DEQ upon your receipt of this Demand Letter by contacting Mr. Mathews, at the address or telephone number indicated above, within 30 days of the date of this Demand Letter. Mr. Mathews will then make arrangements to send you an invoice and directions on making payment for these costs to the DEQ.

CIVIL FINES AND PENALTIES

Please also be advised that if you do not perform the response activities required by Part 201 and the Part 201 Rules, the state may take enforcement action to compel compliance with Part 201 and to seek civil fines pursuant to Part 201 and Part 31, Water Resources Protection, of the NREPA. Section 20137(1)(e)-(f) of the NREPA provides for a civil fine of $1,000 to $10,000 for each day of violation of Part 201 or the Part 201 Rules. In addition, pursuant to Section 20114a(1) of the NREPA, a person, who after June 5, 1995, is responsible for an activity causing a release in excess of the concentrations that satisfy the criteria established pursuant to Section 20120a(1)(a)-(e), as appropriate for the use of the Property, is subject to a civil fine as provided in Part 201, unless a fine or penalty has already been imposed for the release under another part of the NREPA, and unless that person has made a good faith effort to prevent the release and to comply with the provisions of Part 201. Any release or threatened release of a hazardous substance at the Facility that results in the direct or indirect discharge of this hazardous substance into the ground or surface waters of the state may also be a violation of Sections 3109(1) and 3112 of the NREPA, as well as other state and federal laws. Pursuant to Section 3115(1) of the NREPA, the state may seek a civil fine of $25,000 per day for the unpermitted discharge or the direct or indirect discharge of injurious substances to the waters of the state.

If you fail to come into compliance with the provisions of the NREPA, including Part 201 and the Part 201 Rules, and perform the response activities as required in this Demand Letter pursuant to Section 20114(h) of the NREPA, the DEQ may pursue any of the following:

1. Perform the necessary response activities utilizing public funds. Please be advised that you are liable for all costs of response activity lawfully incurred by the state, including accrued interest. These funds are subject to cost recovery actions by the state pursuant to federal and state law, including Sections 20126a and 3115(1) of the NREPA, MCL 324.20126a and 324.3115(1); and the CERCLA, 42 USC 9607(a) *et seq.*

2. Request that you enter into a voluntary agreement with the state to resolve its outstanding liability to the state. This agreement would require you to perform response activities, to reimburse the state its past and future response activity costs, and to potentially require the payment of civil fines and natural resource damages to the state.

3. Issue an administrative order to you under Section 20119 of the NREPA, which would require you to perform response activities at the Facility.

4. Request the Department of Attorney General (DAG) to take enforcement action against you to seek to compel compliance with Part 201. Such action may include the assessment of civil fines for violations of Parts 201 and 31.

If you wish to review the DEQ's files on the Facility, please contact Mr. Mathews at the address or telephone number listed above. If you have questions regarding this Demand Letter, please contact Ms. Michelle Bakun, Remediation and Redevelopment Division Enforcement Case Manager, at 734-953-1463, or you may contact me.

A courtesy copy of this Demand Letter is being sent to the local unit of government in which the Facility is located and to the BRG, the current owner of the Property.

Sincerely,

Andrew W. Hogarth, Chief
Remediation and Redevelopment Division
517-335-1104

Attachments

cc/att: Mr. Gerald A. Dywasuk, Orion Charter Township
Mr. Michael Culpepper, City of Auburn Hills
Mr. Jeffrey W. Kimble, USEPA
Mr. Richard A. Barr, Dean & Fulkerson
Mr. Paul F. Bohn, Fausone, Taylor & Bohn, LLP
Mr. James Stropkai, DAG
Mr. Jim Sygo, Deputy Director, DEQ
Ms. Patricia A. McKay, DEQ
Mr. Philip L. Schrantz, DEQ
Mr. Oladipo Oyinsan, DEQ
Ms. Carrie Olmsted, DEQ
Ms. Michelle Bakun, DEQ
Mr. Benjamin Mathews, DEQ

ATTACHMENT A

MDEQ FEBRUARY 2, 1999, LETTER

STATE OF MICHIGAN

JOHN ENGLER, Governor
DEPARTMENT OF ENVIRONMENTAL QUALITY
"Better Service for a Better Environment"
HOLLISTER BUILDING, PO BOX 30473, LANSING MI 48909-7973

INTERNET: www.deq.state.mi.us
RUSSELL J. HARDING, Director

REPLY TO:
SE MICHIGAN DISTRICT OFFICE
38980 SEVEN MILE RD
LIVONIA MI 48152-1006

February 2, 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Daniel Fons
6451 E. McNichols
Detroit, Michigan 48212

SUBJECT: Sanicem Landfill, 4901 S. Lapeer Road, Orion and Pontiac Township, Oakland County, Michigan

This letter is to advise you of conditions that are present at Sanicem Landfill, (MERA #630060) Oakland, County (the Facility), which are regulated under Part 201 of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

Documents obtained from the Michigan Department of Environmental Quality (MDEQ) files indicate that the J. Fons Company, under the direction of Daniel P. Fons, the former president, acquired a license from Orion Township and began operation at or around May 23, 1969 to landfill 15 acres on the northern portion of the facility. On May 5, 1970, a second license was granted to extend the landfill by an additional 55 acres of land in Pontiac Township. According to records kept by J. Fons Company the amount of waste disposed of daily at the landfill during their operation, was approximately 7,000 to 8,000 cubic yards.

Inspections conducted by MDEQ, Waste Management Division (WMD) staff in 1970 revealed iron, chloride and hardness concentrations at least 10 times the concentrations for uncontaminated surface water. Staff also observed that refuse was being dumped into the water table, and that additional cover was required. From 1970 through 1978, staff cited additional deficiencies including leachate outbreaks, and lack of final grading and seeding.

Samples collected in 1995 by Weston Environmental Company, the level of effort contractor for the Michigan Department of Environmental Quality (MDEQ), Environmental Response Division (ERD) indicate that levels of arsenic and lead were found in the soils above the direct contact criteria and drinking water protection criteria, respectively. Groundwater samples were found to contain phenanthrene above the groundwater surface interface criteria. Drums were also observed at the facility during the investigation.

The conditions confirmed at the facility indicate that a hazardous substance in concentrations which exceed the residential cleanup requirements of Section 20120a(1) (a) of (17) of the NREPA or the cleanup criteria for unrestricted residential use under Part 213 of the NREPA was released, deposited, or became located at the Sanicem Landfill. Any area, place or property where hazardous substances exceed this threshold constitutes a "facility" which is regulated under Part 201.

A person who owns or operates a facility has certain obligations under Part 201, as well as under other state and federal law. "Person" is defined as an individual, partnership, corporation, association, governmental entity or other legal entity.

According to documents obtained from the Oakland County Register of Deeds, on September 23, 1969, Daniel Fons, John P. Fons, Gerald Fons, Robert J. Fannon and John J. Fannon Jr. acquired sidwell numbers 14-002-200-001,14-002-200-002 and 14-002-200-003 from F.H. Martin Construction. On October 23, 1996, Daniel Fons and Alice Fons acquired sidwell number 14-002-200-017 from J. Fons Company and are the current owners of the property generally known as Sanicem landfill located at 4901 S. Lapeer Road, Orion and Pontiac Township, Oakland County, Michigan.

Sanicem Company is listed on the license application as the property owner, J. Fons Company, Inc. is listed as the applicant, and Daniel Fons is listed as the responsible person to contact. Mr. Daniel P. Fons signed the application as the President. Daniel Fons also acquired insurance from the landfill in June of 1969, and signed the surety bond for solid waste disposal on behalf of the J. Fons Company.

According to records contained in the MDEQ files, Daniel Fons was the President of J. Fons Company from 1969 through July 1997. During that period, in a deposition of Daniel Fons, conducted by the MDEQ on March 10, 1998, Daniel Fons stated that he was "running the J. Fons Company. Daniel Fons further stated that, "As president, I was responsible for everything". Daniel Fons also indicated that he paid the bills. He stated that he was one of the partners of Sanicem, who also owned the Sanicem Landfill property from approximately 1969 until the mid 1980's, at which time J. Fons Company bought the property from Sanicem.

According to records kept by J. Fons Company, the amount of waste disposed of daily at the landfill during their operation (1969 through 1978), was approximately 7,000 to 8,000 cubic yards. The MDEQ closed the landfill on June 30, 1978 due to inadequate cover, uncontrolled leachate migration off-site, failure to eliminate odors due to methane gas and failure to install monitoring wells. The J. Fons Company initiated corrective actions to reopen the landfill from August through October of 1981. Due to the fact that the problems were not corrected at the facility, the license was revoked. The problems that still exist at the facility include uninhibited erosion exposing refuse, as well as leachate streams flowing off the landfill and into wetlands. The MDEQ believes that Daniel P. Fons is responsible for an activity causing a release or threat of release of a hazardous substance and therefore is a person liable under Section 20126 of Part 201. Persons liable under Part 201 are responsible for all costs of response activity lawfully incurred by the state relating to the selection and implementation of response activity under Part 201, including, but not limited to, Sections 20107a, 20114, 20118, 20120a, 20120b, 20120c and 20120d of Part 201 of the NREPA and Part 5 of the Part 201 Administrative Rules, unless an exemption or defense to liability applies. The MDEQ's position is based on the MDEQ's current knowledge of the facts pertaining to this facility and is subject to reconsideration should new information become available.

A person who owns property that he or she has knowledge is a facility, shall perform due care pursuant to Section 20107a of the NREPA. These obligations include the following with respect to hazardous substances at the facility:

1. Undertake measures as are necessary to prevent exacerbation of the existing contamination. Exacerbation is defined as the occurrence of either of the following caused by an activity undertaken by the person who owns or operates the property, with respect to existing contamination:

   (i) Contamination that has migrated beyond the boundaries of the property which is the source of the release at levels above cleanup criteria specified in Section 201201(1)(a) unless a criterion is not relevant because exposure is reliably restricted pursuant to Section 20120b.

   (ii) A change in facility conditions that increases response activity costs.

2. Exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances and allow for the intended use of the facility in a manner that protects the public health and safety.

3. Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeable could result from those acts or omissions.

This letter serves as MDEQ's written request for Daniel P. Fons to voluntarily undertake response activity to remedy the environmental contamination at this facility. Pursuant to Section 20114(1)(h) of the NREPA, please take the following actions:

i. Provide a plan for and undertake interim response activities.

ii. Provide a plan for and undertake evaluation activities.

iii. Take any other response activities determined by the MDEQ to be technically sound and necessary.

iv. Submit to the MDEQ a Remedial Action Plan (RAP) that when implemented will achieve the cleanup criteria specified in Part 201.

v. Implement the approved RAP in accordance with the schedule approved by the MDEQ.

Please provide your written commitment, a description of actions taken to date and schedule of proposed actions regarding response activities at the Sanicem Landfill, to Rhonda Cross within 15 days of receipt of this letter.

Failure of Daniel P. Fons to comply with the various provisions of Part 201 without sufficient cause may result in enforcement action by the State of Michigan and the assessment of fines and penalties.

The files used to prepare this notice are located in the MDEQ Southeastern Michigan District Office. If you wish to review the files or if you have questions regarding this letter, please direct your inquiries to Maurice Sanders, Environmental Response Division, Southeastern District Office at (734)-953-1525. A copy of Part 201 of the NREPA, as amended, is enclosed for your convenience.

Sincerely,

Oladipo Oyinsan
Southeastern Michigan District Office
Environmental Response Division
734-953-1429

Enclosure

cc: Mr. Dan Schultz, DEQ
Ms. Patricia McKay, DEQ
Mr. James Thomas, DEQ
Ms. Rhonda Cross, DEQ
Mr. Maurice Sanders, DEQ

ATTACHMENT B

MDEQ OCTOBER 31, 2000, LETTER

STATE OF MICHIGAN

JOHN ENGLER, Governor
DEPARTMENT OF ENVIRONMENTAL QUALITY
"Better Service for a Better Environment"
HOLLISTER BUILDING, PO BOX 30473, LANSING MI 48909-7973

INTERNET: www.deq.state.mi.us
RUSSELL J. HARDING, Director

REPLY TO:

ENVIRONMENTAL RESPONSE DIVISION
KNAPPS CENTRE
PO BOX 30426
LANSING MI 48909-7926

October 31, 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Daniel P. Fons
6451 East McNichols
Detroit, Michigan 48212

Dear Mr. Fons:

SUBJECT: Notice of Demand Regarding the Sanicem Landfill Facility, Orion Charter Township and the City of Auburn Hills, Oakland County, MDEQ Site ID No. 453316

This Notice of Demand (Notice) serves as formal and final notification to you of your legal responsibility relating to the release or threatened release of hazardous substances on and emanating from the Sanicem Landfill property (see attachment) located at 4901 South Lapeer Road and associated areas in Orion Charter Township and the city of Auburn Hills, Oakland County, Michigan. This property and associated areas (hereinafter the Facility) are known to contain concentrations of hazardous substances that exceed the residential cleanup requirements of Section 20120a(1)(a) and (17) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), or the cleanup criteria for unrestricted residential closure under Part 213, Leaking Underground Storage Tanks, of the NREPA. Therefore, the Facility meets the definition found in Section 20101(1)(o) of the NREPA, which defines a facility as an area, place, or property where the concentrations of hazardous substances exceed these criteria and is subject to regulation under state of Michigan law. The state has spent, and is continuing to spend, state funds to address this Facility.

This Notice is provided as a follow-up to the February 2, 1999 Michigan Department of Environmental Quality (MDEQ) notice letter and the October 12, 1999 telephone conversation with the MDEQ staff and your attorney, Mr. Richard Barr. In addition, the MDEQ also sent the J. Fons Company a formal notice letter on April 21, 1995, addressed to you as president of the company. In the MDEQ's previous communications, you were notified of the existence of contamination at this Facility and were requested to undertake response activities to remedy that contamination as required by state and federal laws.

existing refuse; (8) complete information regarding the gas venting system, including determining any need for establishment of additional vents or interceptor trenches to permanently eliminate danger from migrating combustible gases had not been submitted; and (9) the reintroduction of leachate back into the landfill was to have been discontinued on January 21, 1978, but had continued. The MDEQ staff observed leachate being dumped from a truck into the landfill on May 16 and 17, 1978. A Cease and Desist Order sent to you dated June 7, 1978, was based upon the above conditions. The MDEQ closed the landfill on June 30, 1978, due to these conditions. On September 25, 1978, at an administrative hearing, a consent order was issued between the state and the petitioner, the J. Fons Company. The consent order required that the J. Fons Company correct the conditions described above and not operate the landfill until after October 30, 1978, or upon issuance of the necessary permits and licenses. The J. Fons Company failed to meet the conditions in the consent order.

The J. Fons Company initiated corrective actions from August through October 1981 with the intent of reopening the landfill. The J. Fons Company never satisfactorily corrected the problems. Consequently, the Sanicem Company failed to obtain a license to operate and did not reopen the landfill.

Starting in March 1995, a contractor on behalf of the MDEQ performed a remedial investigation (RI) of the Facility. During the RI, drums were observed at the Facility, and the presence of abandoned heavy equipment on the northern portion of the Facility was also noted. Soil samples collected during the RI showed levels of lead above the industrial direct contact criteria. Analysis of leachate from seeps along the landfill perimeter indicated lead levels exceeded drinking water standards. Groundwater sample results indicated phenanthrene was present at levels above the groundwater/surface water interface criteria. The groundwater, including the leachate, at the Facility discharges into a wetland.

In 1996, the contractor for the MDEQ completed an RI and performed some interim response activities at the Facility, including, but not limited to, drum removal, geophysical survey, installation of soil borings and monitoring wells, sample collection and analyses of soil and water samples, monitoring well repair and replacement, methane vent replacement, and repair of the leachate collection system to mitigate off-site migration of leachate.

On August 21, 1998, the MDEQ perfected liens on three parcels of the Facility (Sidwell Nos. 14-02-200-001, 14-02-200-002 and 14-02-200-003) still owned by you to protect the interest of the state in recovering response activity costs at the Facility.

The Facility is presently unused, with unrestricted access and uninhibited erosion exposing refuse. Leachate streams flow off the landfill and into wetlands.

(CERCLA), 42 U.S.C. Section 9607(a), each person who is liable for a facility is jointly and severally liable for all past and future costs lawfully incurred by the state in performing response activities. These persons also may have liability under other applicable state and federal laws.

DEMAND FOR PAYMENT OF COSTS, FINES, AND PENALTIES INCURRED

The state is authorized by law to use public funds to undertake response activities that are necessary to protect the public health, safety and welfare and the environment. The MDEQ has spent, and continues to spend, public funds on response activities at the Facility.

The MDEQ hereby demands payment from you in the amount of $929,205.99 plus any costs that continue to accrue, including any and all interest. This amount includes $591,183.69 in response activity costs, which have been incurred and paid by the state through the dates indicated on the enclosed Summary Report. Costs attributed to response activities that have been conducted by the state include, but are not limited to, a geophysical survey, installation of soil borings and monitoring wells, collection and analyses of soil and groundwater samples, removal of drums and contaminated soils, monitoring well repair and replacement, methane vent replacement, repair of leachate collection system, staff time and travel, and attorney fees.

Pursuant to Section 20137(1)(f) and Section 3115 of Part 31, Water Resources Protection, of the NREPA, the state also may seek to assess and recover fines and penalties from a liable person for violations of the provisions of the NREPA. These fines and penalties accrue at the rate of not more than $10,000 per day pursuant to Section 20137(1)(f) of the NREPA, and $25,000 per day pursuant to Section 3115 of the NREPA. Based on the information presently available to the MDEQ, the state may assess these penalties for the following violations: (1) failure to perform due care pursuant to Section 20107a of the NREPA; (2) failure to diligently pursue response activities at the Facility pursuant to Section 20114(1)(g) of the NREPA; and (3) unauthorized discharges to the surface waters of the state pursuant to Section 3109(1) of the NREPA from leachate seeps on the south side of the former landfill discharging into an adjacent wetland.

REQUEST FOR RESPONSE ACTIVITIES

This Notice also serves as the MDEQ's written request that you undertake response activities to remedy contamination at the Facility. If you do not agree to undertake these response activities, the state may perform these response activities, and you will be legally liable for the reimbursement of the costs for those response activities to the state.

TIMING AND FORM OF RESPONSE TO THIS NOTICE OF DEMAND

A meeting has been scheduled for Monday, November 20, 2000, at 2:30 p.m., in the Knapp's Office Centre, 300 South Washington Square, Lansing, Michigan, for you and your representative to meet with representatives of the Environmental Response Division (ERD), MDEQ, and the Natural Resources and Environmental Quality Division, Michigan Department of Attorney General (MDAG), to discuss this Notice. Ten days prior to the above-scheduled meeting date, please confirm your intent to attend the meeting by writing Ms. Rhonda Cross, Enforcement Case Manager, Southeast Michigan District Office, ERD, at 38980 West Seven Mile Road, Livonia, Michigan 48152, or telephoning her at 734-953-1497. If you wish to voluntarily resolve your liability as described in this Notice, you must enter into an enforceable Administrative Order by Consent (AOC) with the state in which you agree to reimburse the state its past and future response costs, resolve the state's fine/penalty claim, and undertake response activities. Enclosed is a copy of the model AOC document that the MDEQ and the MDAG would require you to enter to settle this matter. If you intend to dispute any of the costs or claims made by the state in this Notice, you are required to provide for discussion at the aforementioned meeting a detailed list of the specific disputed items, including the basis for each dispute, within 30 days of your receipt of this Notice.

If at the aforementioned meeting, you agree to engage in good-faith negotiations with the state to pursue resolution of this matter, the MDEQ and the MDAG will provide an additional 60 days beyond the date of that meeting to resolve this matter. Resolution must include entry into an enforceable AOC with the state to reimburse the state its response activity costs, to resolve the state's fine/penalty claim, and to agree to the implementation of response activities.

If we are unable to resolve this matter in accordance with the schedule outlined above, the state will take appropriate action to secure the implementation of necessary response activities and to recover all response activity costs, interest, and fines and penalties. Such action may include foreclosure on the state's liens and/or a lawsuit pursuant to Sections 20137 and 3115 of the NREPA and/or Section 107 of the CERCLA.

If you wish to review the MDEQ files on the Sanicem Landfill Facility, please contact Mr. Benjamin Mathews, Project Manager, Southeast Michigan District Office, ERD, at 734-953-1447. A courtesy copy of this Notice is being sent to the local units of government in which the Facility is located.

63-215590

QUIT CLAIM DEED

STATUTORY FORM

LIBER 8489 PAGE 280

83 91384

KNOW ALL MEN BY THESE PRESENTS: That John J. Fannon, Jr. and Mary C. Fannon, his wife,

whose address is 780 Grand Marais, Grosse Pointe Park, Michigan 48230

Quit Claim to Fons Company, Inc., a Michigan Corporation,

whose street number and postoffice address is 6451 E. McNichols Road, Detroit, Michigan 48212

the following described premises situated in the Townships of Pontiac & Orion County of Oakland, and State of Michigan~~XXXX~~, as described and set forth in the attachment hereto which is made a part hereof, marked Exhibit I.

RECORDED
OAKLAND COUNTY MICHIGAN
REGISTER OF DEEDS RECORDS

'83 OCT -6 9:29

LYNN D. ALLEN
CLERK-REGISTER OF DEEDS

together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, for ~~XXXXXX~~ and encumbrances of record, but retaining unto the Grantor any and all gas now possessed and/or hereafter acquired to such property.

Exempt by Public Act No. 67 of 1969 7.456 (5) a

Dated this 3rd day of August 1982

Signed in the presence of:

Lawrence D. Heitsch

Lawrence D. Heitsch

Beverly A. Pohocsucut

Beverly A. Pohocsucut

Signed by:

John J. Fannon Jr.

JOHN J. FANNON, JR.

Mary C. Fannon

MARY C. FANNON

STATE OF MICHIGAN)
COUNTY OF Oakland) ss.

The foregoing instrument was acknowledged before me this 3rd day of August

19 82 by John J. Fannon and Mary C. Fannor, his wife
Grantor

LAWRENCE D. HEITSCH
Notary Public, Oakland Co., Mi
My Commission expires June 20, 1984

Lawrence D. Heitsch

Oakland *Notary Public, County, Michigan*

When Recorded Return To:	Send Subsequent Tax Bills To:	Drafted by: LAWRENCE D. HEITSCH Business Address P.O. Box 1198 Birmingham, Michigan 48012
Grantee	Grantee	

Tax Parcel # _____ Recording Fee _____ Revenue Stamps A.S. _____

BURTON ABSTRACT AND TITLE COMPANY HAS OPERATED CONTINUOUSLY SINCE 1866

MAKE YOUR REAL ESTATE TRANSFERS SAFE BY USING BURTON TITLE INSURANCE

MC-14

EXHIBIT 1

The following is a description Real Estate located in the County of Oakland, State of Michigan, con taining one hundred forty (140) acres, more or less.

Parcel A

A parcel of land located in and being a part of the Southeast 1/4 of Section 35, Town 4 North, Range 10 East, Orion Township, and a part of the Northeast 1/4 of Section 2, Town 3 North, Range 10 East, Pontiac Township, Oakland County, Michigan, and being more particularly described as follows:

Commencing at the Southeast corner of said Section 35 and thence extending North 88 degrees 30 minutes West 1354.07 feet; thence South 01 degree 16 minutes 30 seconds West 379.30 feet; thence North 88 degrees 44 minutes West 1343.30 feet; thence North 02 degrees 10 minutes 30 seconds East 384.80 feet to the South 1/4 corner of said Section 35; thence South 88 degrees 30 minutes East 42.00 feet; thence North 03 degrees 21 minutes East 831.00 feet; thence South 88 degrees 21 minutes East 1877.10 feet; thence along a curve concave to the South Radius 400.00 feet whose long chord bears South 58 degrees 21 minutes East 400.00 feet; thence South 28 degrees 21 minutes East 183.79 feet; thence along a curve concave to the North Radius 300.00 feet whose long chord bears South 58 degrees 21 minutes East 300.00 feet; thence South 88 degrees 21 minutes East 10.00 feet to the East line of said Section 35; thence South 05 degrees 30 minutes East 317.00 feet to the point of the beginning.

09-35-400-005 - SE 1/4 Sec 35
14-02-200-001 - NE 1/4 Sec 2

Parcel B

Part of Northeast Fractional 1/4 Section 2, Town 3 North, Range 10 East, beginning at point distant North 2603.87 feet and East 91.42 feet from center of Section, thence North 88 degrees 53 minutes 00 seconds East 650 feet, thence South 32 degrees 45 minutes 50 seconds West 490.04 feet, thence South 40 degrees 34 minutes 40 seconds West 133.25 feet, thence South 88 degrees 53 minutes 00 seconds West 302.38 feet, thence North 00 degrees 28 minutes 00 seconds East 100 feet, thence North 00 degrees 16 minutes 00 seconds West 400 feet to beginning.

14-02-200-002

Parcel C

Part of Northeast Fractional 1/4 Section 2, Town 3 North, Range 10 East, beginning at point on Easterly line of Lapeer Road, North 1496.42 feet and East 83.89 feet from center of Section, thence North 01 degree 10 minutes 00 seconds East 261.96 feet, thence North 00 degrees 28 minutes 00 seconds East 343.20 feet, thence North 88 degrees 53 minutes 00 seconds East 302.38 feet, thence North 40 degrees 34 minutes 40 seconds East, 133.25 feet, thence North 32 degrees 45 minutes 50 seconds East 490.04 feet, thence North 88 degrees 53 minutes 00 seconds East 400 feet, thence South 01 degree 08 minutes 00 seconds East 400 feet, thence South 01 degree 09 minutes 00 seconds East 704.73 feet, thence South 88 degrees 53 minutes 00 seconds west 1237.19 feet to beginning.

14-02-200-003

owner

09-35-400-004

Parcel D

East 1/2 of the Northeast Fractional 1/4 of Section 2, Town 3 North, Range 10 East, except beginning at East 1/4 corner, thence North 89 degrees 59 minutes 30 seconds West 1372.14 feet, thence North 00 degrees 42 minutes 30 seconds West 633.17 feet, thence South 89 degrees 59 minutes 30 seconds East 1379.97 feet, thence South 633.12 feet to beginning, Also except beginning at point distant North 1390 feet and North 72 degrees 10 minutes 30 seconds West 356 feet and North 41 degrees 21 minutes 30 seconds West 404 feet from East 1/4 corner, thence South 57 degrees 03 minutes 30 seconds West 295 feet, thence North 32 degrees 56 minutes 30 seconds West 200 feet, thence North 57 degrees 03 minutes 30 seconds East 265.41 feet, thence South 41 degrees 21 minutes 30 seconds East 202.18 feet to beginning, Also except beginning at point distant North 633.12 feet from East 1/4 corner, thence North 89 degrees 59 minutes 30 seconds West 544.50 feet, thence North 400 feet, thence South 89 degrees 59 minutes 30 seconds East 544.50 feet, thence South 400 feet to beginning.

14-02-200-011

SUMMARY REPORT

Site Name SANICEM LANDFILL

County OAKLAND

Site ID Number 630060

Project Number 453316

Employee Salaries and Wages		
Period Covered: 7/1/91 - 12/11/99	$ 104,192.93	
Indirect Dollars	$ 19,004.43	
Sub-Total		$ 123,197.36
Employee Travel Expenses		
Period Covered: 7/6/91 - 9/30/98		$ 9,019.28
Contractual Expenses		
Roy F. Weston, Inc. #94-Y40046 Open		
Period Covered: 5/1/95 - 6/23/98	$ 166,385.51	
Roy F. Weston, Inc. #Y-50121 Open		
Period Covered: 8/4/95 - 2/26/98	$ 253,908.20	
WW Engineering & Science		
Period Covered: 5/17/93	$ 12,591.90	
Sub-Total		$ 432,885.61
Miscellaneous Expenses		
Period Covered: 8/27/91 - 5/4/99		$ 12,244.55
Lab Expenses (DNR/DEQ)		
Period Covered: 7/9/91 - 10/9/92		$ 12,224.49
Attorney General Expenses		
Period Covered: 9/30/97 - 4/15/98		$ 1,612.40
Total Combined Expenses for Site		**$ 591,183.69**
Interest from 4/30/95 through 1/31/00		**$ 338,022.30**
TOTAL		**$ 929,205.99**

Run Date: 2/15/2000